

REVENUE DEPARTMENT[701]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 10, “Interest, Penalty, Exceptions to Penalty, and Jeopardy Assessments,” Chapter 38, “Administration,” Chapter 40, “Determination of Net Income,” Chapter 43, “Assessments and Refunds,” Chapter 44, “Penalty and Interest,” Chapter 53, “Determination of Net Income,” and Chapter 59, “Determination of Net Income,” Iowa Administrative Code.

These amendments are proposed as a result of 2010 Iowa Acts, House Files 2531 and 2532.

Item 1 adopts new rule 701—10.5(421), which was previously rescinded, to provide for penalties for improper receipt of a refund or credit.

Item 2 amends subrule 38.17(3) to provide for changes in the taxation of spouses of military personnel in accordance with the Military Spouses Residency Relief Act, Public Law No. 111-97.

Item 3 amends rule 701—40.1(422) to reference new rule 701—40.75(422).

Item 4 amends subrule 40.16(5) to correct an example regarding the reporting of income for Iowa individual income tax from intangible personal property for nonresidents of Iowa.

Item 5 amends rule 701—40.65(422) to provide that the increase in the expensing allowance under Section 179 of the Internal Revenue Code is not allowed for Iowa individual income tax purposes for tax periods beginning on or after January 1, 2009, but beginning before January 1, 2010.

Item 6 adopts new rule 701—40.75(422) related to the exclusion of certain income received from the Iowa veterans trust fund from Iowa individual income tax.

Item 7 amends the implementation clause for rule 701—43.4(68A,422,456A).

Item 8 adopts new rule 701—44.5(422) to provide for the waiver of penalty and interest related to additional tax associated with amended returns for Iowa individual income tax for certain casualty losses for the 2008 tax year.

Items 9 and 10 amend paragraph 53.15(1)“a” and subparagraph 53.15(3)“c”(2) to remove obsolete provisions regarding consolidated Iowa corporation income tax returns that relate to tax periods beginning prior to July 1, 1992.

Item 11 amends rule 701—53.23(422) to provide that the increase in the expensing allowance under Section 179 of the Internal Revenue Code is not allowed for Iowa corporation income tax purposes for tax periods beginning on or after January 1, 2009, but beginning before January 1, 2010. This is similar to the change in Item 5.

Item 12 amends rule 701—59.24(422) to provide that the increase in the expensing allowance under Section 179 of the Internal Revenue Code is not allowed for Iowa franchise tax purposes for tax periods beginning on or after January 1, 2009, but beginning before January 1, 2010. This is similar to the change in Item 5.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written

request is filed by delivery or by mailing postmarked no later than August 31, 2010, to the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before August 17, 2010. Such written comments should be directed to the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. Persons who want to convey their views orally should contact the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, at (515)281-8450 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by August 27, 2010.

These amendments are intended to implement Iowa Code section 421.27 as amended by 2010 Iowa Acts, House File 2531, section 124; 2010 Iowa Acts, House File 2531, sections 159 and 160; and 2009 Iowa Code Supplement section 422.7 as amended by 2010 Iowa Acts, House File 2532.

The following amendments are proposed.

ITEM 1. Adopt the following new rule 701—10.5(421):

701—10.5(421) Improper receipt of credit or refund. A person who makes an erroneous application for refund or credit shall be liable for any overpayment received plus interest at the rate in effect under Iowa Code section 421.7, subsection 2. In addition, a person who willfully makes a false or frivolous application for refund or credit with the intent to evade tax or with the intent to receive a refund or credit to which the person is not entitled is guilty of a fraudulent practice and is liable for a penalty equal to 75 percent of the refund or credit claimed.

This rule is intended to implement Iowa Code section 421.27 as amended by 2010 Iowa Acts, House File 2531, section 124.

ITEM 2. Amend subrule **38.17(3)**, fifth unnumbered paragraph, as follows:

Spouses For tax years beginning before January 1, 2009, spouses of military personnel who earn wages and other incomes from Iowa sources are taxed on these incomes similarly to other nonresidents of Iowa. Spouses of Iowa resident military personnel who were nonresidents of Iowa at the time of the marriages with the Iowa residents will not be considered to be residents of Iowa until they actually reside in Iowa with their husbands or wives. For tax years beginning on or after January 1, 2009, spouses who earn wages from Iowa sources are not subject to Iowa income tax on these wages if one spouse who is present in Iowa is a member of the armed forces, the other spouse is present in Iowa solely to be with the military spouse, and the spouse who is a member of the armed forces maintains a domicile in another state. This treatment for tax years beginning on or after January 1, 2009, is required by the Military Spouses Residency Relief Act, Public Law No. 111-97.

ITEM 3. Amend rule 701—40.1(422) as follows:

701—40.1(422) Net income defined. Net income for state individual income tax purposes shall mean federal adjusted gross income as properly computed under the Internal Revenue Code and shall include the adjustments in 701—40.2(422) to 701—40.9(422). The remaining provisions of this rule and 701—40.12(422) to 701—40.74(422) 701—40.75(422) shall also be applicable in determining net income.

This rule is intended to implement Iowa Code section 422.7.

ITEM 4. Amend subrule **40.16(5)**, Example G, as follows:

EXAMPLE G - A nonresident is a partner in a family investment partnership in which the other partners are members of the same family. The other partners are residents of Iowa. The partnership invests in mutual funds, interest-bearing securities and stocks which produce interest, dividend and capital gain income for the partnership. The partners who are Iowa residents make ~~the~~ occasional decisions in Iowa on what investments should be made by the partnership. The distributive share of interest, dividend and

capital gain income reported by the nonresident would not be included in net income allocated to Iowa since it was not derived from a business carried on within the state. *Jensen, Herman A. & Vineta L.*, Docket No. 88-20-1-0014, Letter of Findings (1992).

ITEM 5. Amend rule 701—40.65(422), introductory paragraph, as follows:

701—40.65(422) Section 179 expensing. For tax periods beginning on or after January 1, 2003, but beginning before January 1, 2006, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 108-27, Section 202, may be taken for Iowa individual income tax. If the taxpayer elects to take the increased Section 179 expensing, the Section 179 expensing allowance on the Iowa individual income tax return is the same as the Section 179 expensing allowance on the federal income tax return for tax years beginning on or after January 1, 2003, but beginning before January 1, 2006. In addition, for tax periods beginning on or after January 1, 2008, but beginning before January 1, 2009, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 110-185, Section 102, may be taken for Iowa individual income tax. For tax periods beginning on or after January 1, 2009, but beginning before January 1, 2010, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 111-5, Section 1202, cannot be taken for Iowa individual income tax purposes. The maximum amount of Section 179 expensing allowed for tax periods beginning on or after January 1, 2009, but beginning before January 1, 2010, is \$133,000 for Iowa individual income tax purposes.

ITEM 6. Adopt the following new rule 701—40.75(422):

701—40.75(422) Exclusion of certain amounts received from Iowa veterans trust fund. For tax years beginning on or after January 1, 2010, a taxpayer may subtract, to the extent included in federal adjusted gross income, the amounts received from the Iowa veterans trust fund related to travel expenses directly related to follow-up medical care for wounded veterans and their spouses and amounts received related to unemployment assistance during a period of unemployment due to prolonged physical or mental illness or disability resulting from military service.

This rule is intended to implement Iowa Code section 422.7 as amended by 2010 Iowa Acts, House File 2532.

ITEM 7. Amend rule **701—43.4(68A,422,456A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 422.12D, 422.12E, and 422.12H and ~~2008~~ 2010 Iowa Acts, ~~Senate House~~ House File ~~2424~~ 2531, division ~~H~~ XII.

ITEM 8. Adopt the following new rule 701—44.5(422):

701—44.5(422) Waiver of penalty and interest related to certain casualty losses. For tax years beginning on or after January 1, 2008, but before January 1, 2009, the increase in the amount of casualty loss claimed as an itemized deduction authorized under Section 165(h) of the Internal Revenue Code, as modified by the Heartland Disaster Relief Act of 2008, Public Law No. 110-343, Section 706, cannot be taken for Iowa individual income tax purposes. If taxpayers filed their Iowa individual income tax return for the 2008 tax year and claimed the same amount of itemized deduction for casualty losses as allowed on the federal income tax return, taxpayers who amend their Iowa return for 2008 to claim a reduced amount of casualty losses for Iowa tax purposes will not be charged penalty and interest on the additional Iowa income tax due. If taxpayers had previously amended their Iowa return to report a reduced casualty loss for Iowa tax purposes and had paid penalty and interest related to the additional Iowa tax due, the amount of penalty and interest paid will be refunded by the department.

EXAMPLE: A taxpayer with \$50,000 of federal adjusted gross income claimed a \$15,000 itemized deduction for casualty losses on timely filed federal and Iowa income tax returns for 2008 based upon the changes to Section 165(h) of the Internal Revenue Code. Because Iowa did not adopt the changes to Section 165(h) of the Internal Revenue Code, taxpayer is only allowed a \$9,900 itemized deduction

for casualty losses for Iowa tax purposes for 2008. Taxpayer filed an amended Iowa return on August 1, 2010, for the 2008 tax year and paid \$346 of additional Iowa income tax due to the reduced casualty loss deduction. Taxpayer will not owe any penalty for failure to timely pay the tax due, and the taxpayer will not owe any interest due to the late payment of tax.

This rule is intended to implement 2010 Iowa Acts, House File 2531, division XX.

ITEM 9. Amend paragraph **53.15(1)“a”** as follows:

a. An affiliated group of corporations which did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year. Each corporation which is subject to the Iowa corporation income tax ~~or is unitary with a member which is subject to the Iowa corporation income tax~~ and has been a member during any part of the taxable year for which the consolidated return is to be filed must consent (as provided in paragraph 53.15(1)“d”) to the filing of the consolidated return. ~~For tax years beginning on or after July 1, 1992, only those members of the affiliated group of corporations which are subject to the Iowa corporation income tax may be included in the Iowa consolidated return. If the statutory change in the members of an affiliated group of corporations which may be included in an Iowa consolidated income tax causes a change in the members of the affiliated group actually included in the Iowa consolidated income tax return for the previous tax year, the taxpayer may discontinue filing a consolidated Iowa corporation income tax return for the first tax year beginning on or after July 1, 1992.~~

ITEM 10. Amend subparagraph **53.15(3)“c”(2)** as follows:

(2) If one or more of the members of the affiliated group cease to be subject to Iowa corporate income tax ~~or cease to have operations which constitute a part of the unitary business of one or more members subject to the Iowa tax~~, consolidation may be discontinued in whole or in part.

ITEM 11. Amend rule 701—53.23(422), introductory paragraph, as follows:

701—53.23(422) Section 179 expensing. For tax periods beginning on or after January 1, 2003, but beginning before January 1, 2006, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 108-27, Section 202, may be taken for Iowa corporation income tax. If the taxpayer elects to take the increased Section 179 expensing, the Section 179 expensing allowance on the Iowa corporation income tax return is the same as the Section 179 expensing allowance on the federal income tax return for tax years beginning on or after January 1, 2003, but beginning before January 1, 2006. In addition, for tax periods beginning on or after January 1, 2008, but beginning before January 1, 2009, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 110-185, Section 102, may be taken for Iowa corporation income tax. For tax periods beginning on or after January 1, 2009, but beginning before January 1, 2010, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 111-5, Section 1202, cannot be taken for Iowa corporation income tax purposes. The maximum amount of Section 179 expensing allowed for tax periods beginning on or after January 1, 2009, but beginning before January 1, 2010, is \$133,000 for Iowa corporation income tax purposes.

ITEM 12. Amend rule 701—59.24(422), introductory paragraph, as follows:

701—59.24(422) Section 179 expensing. For tax periods beginning on or after January 1, 2003, but beginning before January 1, 2006, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 108-27, Section 202, may be taken for Iowa franchise tax. If the taxpayer elects to take the increased Section 179 expensing, the Section 179 expensing allowance on the Iowa franchise tax return is the same as the Section 179 expensing allowance on the federal income tax return for tax years beginning on or after January 1, 2003, but beginning before January 1, 2006. In addition, for tax periods beginning on or after January 1, 2008, but beginning before January 1, 2009, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public

Law No. 110-185, Section 102, may be taken for Iowa franchise tax. For tax periods beginning on or after January 1, 2009, but beginning before January 1, 2010, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 111-5, Section 1202, cannot be taken for Iowa franchise tax purposes. The maximum amount of Section 179 expensing allowed for tax periods beginning on or after January 1, 2009, but beginning before January 1, 2010, is \$133,000 for Iowa franchise tax purposes.